

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA

JEFFREY C. ARRITT,

Plaintiff,

v.

Civil Action No. 5:13CV9  
(STAMP)

CAROLYN W. COLVIN,  
Acting Commissioner  
of Social Security,

Defendant.

**ORDER AFFIRMING AND ADOPTING REPORT AND RECOMMENDATION  
AND DISMISSING CIVIL ACTION FOR FAILURE TO PROSECUTE**

On January 23, 2013, Jeffrey Arritt filed a pro se<sup>1</sup> complaint against the Commissioner requesting review of a denial of his application for Disability Insurance Benefits ("DIB") under Title II of the Social Security Act. The Commissioner filed the Social Security Administrative Record, and answered the complaint on April 10, 2013. On May 13, 2013, United States Magistrate Judge James E. Seibert advised the plaintiff that Local Rule of Civil Procedure 9.02(c) provides that, in Social Security cases, the plaintiff must file a motion for summary judgment "[w]ithin thirty days after the defendant has filed an answer and a complete copy of the administrative record." Magistrate Judge Seibert allowed the plaintiff thirty days from the receipt of this notice to comply with this local rule. The plaintiff accepted this notice on May

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<sup>1</sup>"Pro se" describes a person who represents himself in a court proceeding without the assistance of a lawyer. Black's Law Dictionary 1341 (9th ed. 1999).

14, 2013, but, as of the date of this order, has not filed a motion for summary judgment.

On June 19, 2013, the magistrate judge entered a report and recommendation recommending that this Court dismiss this civil action for failure to prosecute. The magistrate judge informed the parties that, if either party objected to the recommendation made in the report, written objections were to be filed within fourteen days of receipt of the report and recommendation. No objections were filed.

After review of the record, it is clear that, as of the date of this order, the plaintiff has not filed a motion for summary judgment or in any way proceeded with the prosecution of this civil action. Accordingly, pursuant the local rules mandating that the plaintiff file a motion for summary judgment within 30 days of receipt of the Commissioner's answer and the Administrative Record, and based upon the report and recommendation entered by the magistrate judge along with the entire record before this Court, the magistrate judge's report and recommendation is hereby AFFIRMED AND ADOPTED. It is thus ORDERED that this civil action be DISMISSED WITHOUT PREJUDICE for failure to prosecute and STRICKEN from the active docket of this Court.

Moreover, this Court finds that the plaintiff was properly advised by the magistrate judge that failure to timely object to the report and recommendation in this action will result in a waiver of appellate rights. Thus, the plaintiff's failure to

object to the magistrate judge's proposed findings and recommendation bars the plaintiff from appealing the judgment of this Court. See 18 U.S.C. § 636(b)(1); Wright v. Collins, 766 F.2d 841, 845 (4th Cir. 1985); Thomas v. Arn, 474 U.S. 140 (1985).

IT IS SO ORDERED.

The Clerk is DIRECTED to transmit a copy of this memorandum opinion and order to the pro se plaintiff by certified mail and to counsel of record herein. Pursuant to Federal Rule of Civil Procedure 58, the Clerk is directed to enter judgment on this matter.

DATED: July 15, 2013

/s/ Frederick P. Stamp, Jr.  
FREDERICK P. STAMP, JR.  
UNITED STATES DISTRICT JUDGE